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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

MARIO R. JUAREZ, Plaintiff and Respondent, v. BOY SCOUTS OF AMERICA et al., Defendants and Appellants.	A099833 (Alameda County Super. Ct. No. 767805-5)

I.

INTRODUCTION

After respondent Mario R. Juarez (Juarez) was sexually molested by his scoutmaster Jorge Paz, Juarez sued Paz and several other defendants, including Boy Scouts of America, San Francisco Bay Area Council, and Boy Scouts of America, Inc. (collectively, the Scouts). Trial of Juarez's action against the Scouts resulted in a jury verdict in favor of the Scouts. Juarez has filed a notice of appeal from the judgment entered on that verdict.

This appeal does not arise from the jury's verdict. Instead, the Scouts have filed this separate appeal from a pretrial evidentiary order. The challenged order denies the Scout's request to disqualify an expert witness called by Juarez to testify about sexual misconduct in youth organizations such as the Scouts. Additionally, the order denies the Scout's request to have the expert witness turn over confidential files containing allegations of sexual abuse against certain adult volunteers in scouting programs (ineligible volunteer files). By motion, Juarez has moved to dismiss this appeal on

grounds that the Scouts have appealed from a nonappealable order. We agree and, consequently, dismiss this appeal.

II.

PROCEEDINGS IN TRIAL COURT

The underlying facts of this case are thoroughly explored in our prior opinion *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377 (*Juarez I*). In *Juarez I*, this court reversed the summary judgment granted for the Scouts and remanded the case for trial to determine whether the Scouts had failed to take reasonable measures to protect the members of Juarez's scout troop against the risk of molestation by a pedophilic adult troop leader and, if so, whether such failure was a legal cause of the molestation Juarez suffered.

After the case was remanded for trial, the Scouts filed "Motion in Limine No. 5," entitled "Motion in Limine of Defendants to Exclude Testimony of Expert Witness Gene Abel." That motion asked, among other things, that Dr. Abel be disqualified as a witness because he had reviewed confidential information contained in the ineligible volunteer files in violation of a protective order entered in this case. (See *Juarez I*, *supra*, 81 Cal.App.4th at p. 392.) After arguments were heard and considered by a special master appointed for that purpose, the court ruled on June 10, 2002, that Dr. Abel would be permitted to testify but not to mention the ineligible volunteer files (except for five redacted exemplar files).[1] On June 14, 2002, the Scouts petitioned this court for a writ of mandate to review that ruling. We summarily denied the petition. Dr. Abel testified before the jury on June 17, 2002. The Scouts filed their notice of appeal from the court's June 10th order on August 9, 2002.

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[1] The special master ruled that the ineligible volunteer files had been obtained in an "open and legal manner," rendering inapplicable the case law relied upon by the Scouts disqualifying persons who had obtained confidential information they were not entitled to see.

III.

DISCUSSION

The obvious first question is whether the Scouts have standing to appeal as a party "aggrieved" by the challenged order. A party has standing to appeal only if legally "aggrieved" by the appealable judgment or order. (Code Civ. Proc., § 902 [" 'Any aggrieved party may appeal . . . .' "].) A party is legally "aggrieved" if his or her "rights or interests are injuriously affected by the judgment. [Citations.]" (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) The rights or interests injuriously affected must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment. (*Id.* at p. 737; see also *Schmidt v. Retirement Board* (1995) 37 Cal.App.4th 1204, 1209.)

"This [rule of standing] is no mere technicality, but is grounded in the most basic notion of why courts entertain civil appeals. We are here to provide relief for appellants who have been wronged by trial court error. Our resources are limited and thus are not brought to bear when appellants have suffered no wrong . . . . The guiding principle is one often encountered in daily life: no harm, no foul." (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1132.) Because the Scouts won below, it is difficult to imagine they were "aggrieved" by the superior court's refusal to disqualify Dr. Abel or by its decision to allow him to rely on redacted information from the ineligible volunteer files in his testimony.[2]

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[2] In their opposition to dismissal of this appeal, the Scouts argue that while they are "not aggrieved in connection with the outcome of the underlying lawsuit, [they] are aggrieved" by "Dr. Abel's continuing possession of the Ineligible Volunteer Files . . . ." (Underscoring omitted.) The ineligible volunteer files were not obtained in the normal course of discovery in the underlying case; but instead were given to Juarez's counsel by another attorney involved in similar litigation. If the Scouts believe Juarez's counsel and Dr. Abel are in wrongful possession of confidential documents, an independent action may be instituted to compel them to surrender these documents. (See, e.g., *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060.)

Additionally, it is apparent that the Scouts have intended to perfect review of an order that is patently nonappealable. As this court recently explained in *Conservatorship of Rich* (1996) 46 Cal.App.4th 1233 (*Rich*): "There are three categories of appealable judgments or orders: (1) final judgments as determined by case law, (2) orders and interlocutory judgments made expressly appealable by statute, and (3) certain judgments and orders that, although they do not dispose of all issues in the case are considered 'final' for appeal purposes and are exceptions to the one-final-judgment rule. [Citation.]" (*Id*. at p. 1235.)

The order challenged here is plainly interlocutory—not a "final decision" or judgment in any normal sense. Nor does anyone argue that we are reviewing an order made appealable by statute. (See *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 207 [no appeal lies from order denying objection to introduction of evidence as it is not among interlocutory orders made appealable by Code of Civil Procedure section 904.1].) Rather, in opposing the motion to dismiss, the Scouts argue that the order entered with respect to Juarez's expert witness falls within the third category of appealable orders—the so-called "collateral order" class of appealable orders.

The collateral order doctrine applies when the following three elements are present: (1) the judgment or order is final as to the collateral matter; (2) the subject of the judgment or order is in fact collateral to the general subject of the litigation; and (3) the judgment or order directs the payment of money by the appellant or the performance of an act by or against the appellant. (*Sjoberg v. Hastorf* (1948) 33 Cal.2d 116, 119; *Marsh v. Mountain Zephyr, Inc*. (1996) 43 Cal.App.4th 289, 297-298.) The Scouts rely on this exception to the "one final judgment" rule, but their reliance is misplaced because the appealed order fails to meet the third requirement of the collateral order doctrine.

The third element of the collateral order doctrine requires that the order being appealed must direct the payment of money or performance of an act. (*Sjoberg v. Hastorf*, *supra*, 33 Cal.2d at p. 119; *Bauguess v. Paine* (1978) 22 Cal.3d 626, 634, fn. 3; *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 561.) "It is settled that an order which only *prevents* the performance of an act or payment of money does not meet the collateral

order exception to the one-final-judgment rule and is nonappealable. [Citations.]" (*Rich*, *supra*, 46 Cal.App.4th at pp. 1235-1236, italics added.) The June 10th order challenged in this appeal did not judicially compel or direct the parties to take any action whatsoever.

Although the Scouts acknowledge that the court's denial of its motion in limine does not direct them to pay any money or perform any act, they point to several cases approving direct appeals under the "collateral order" exception despite failure to direct payment of money or performance of an act. In particular, the Scouts rely on an early decision from our Supreme Court, *Meehan v. Hopps* (1955) 45 Cal.2d 213 (*Meehan*), authorizing an appeal from a collateral order denying a motion to disqualify counsel without imposing the money/act limitation. (*Id.* at pp. 216-217.) In *Meehan*, the attorney disqualification order was found to be appealable on two grounds—because the court believed it was equivalent to a ruling denying injunctive relief, and because it was a final order on a collateral matter unrelated to the underlying merits of the litigation. (*Ibid*.) The Scouts indicate *Meehan* is "directly on point" and argue the challenged order here is immediately appealable.

Although *Meehan's* rationale has been questioned (see *Truck Ins. Exchange v. Fireman's Fund Ins. Co*. (1992) 6 Cal.App.4th 1050, 1052, fn. 1), appellate courts are bound to follow that decision, where applicable, under principles of stare decisis. Consequently, there are numerous cases standing for the proposition that attorney disqualification orders are directly appealable. (*Ibid*.; see also *State Water Resources Control Bd. v. Superior Court* (2002) 97 Cal.App.4th 907, 913; *Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc*. (1999) 69 Cal.App.4th 1399, 1402, fn. 1, and cases cited therein.) However, no reported California case extends the *Meehan* rationale to orders relating to the disqualification of expert witnesses.

Moreover, and perhaps more importantly, this court has construed *Meehan* as not purposefully intending to eliminate the "payment of money or performance of an act" requirement for appealing interim orders. (See *Rich*, *supra*, 46 Cal.App.4th at p. 1237; accord, *Efron v. Kalmanovitz* (1960) 185 Cal.App.2d 149, 155-156; *Ponce-Bran v. Trustees of Cal. State Universities & Colleges* (1996) 48 Cal.App.4th 1656, 1661, fn. 3

(*Ponce-Bran*) ["If *Meehan* has any effect on other types of orders, we leave it for the Supreme Court to extend the rule beyond the context of [attorney] disqualifications"]; *Lester v. Lennane*, *supra,* 84 Cal.App.4th at p. 561.)

We labeled the cases relaxing this rule as "aberrant" and concluded "that judicially compelled payment of money or performance of an act remains an essential prerequisite to the appealability of a final order regarding a collateral matter. [Citation.]" (*Rich*, *supra*, 46 Cal.App.4th at p. 1237.) In adherence to the reasoning we espoused in *Rich*, the June 10, 2002 order is not appealable under the collateral order doctrine because it does not judicially compel the payment of money or performance of an act.

While the Scouts ask us to treat the purported appeal as a writ petition, "the exercise of that option is reserved for 'unusual circumstances.' [Citation.] 'Routine granting of requests to treat improper appeals as writs where there are no exigent reasons for doing so would only encourage parties to burden appellate courts with reviews of intermediate orders.' [Citation.]" (*Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42; see also *Bishop v. Merging Capital, Inc.* (1996) 49 Cal.App.4th 1803, 1808-1809; *Ponce-Bran*, *supra*, 48 Cal.App.4th at p. 1662.) We note that we have already addressed the Scouts' expert disqualification issue through its petition for writ relief, which was denied. As there do not appear to be any unusual circumstances to justify treating this appeal as a writ petition, we decline to do so.

IV.

DISPOSITION

We dismiss this appeal without reaching its merits for lack of appellate jurisdiction. Juarez is awarded his costs on appeal.

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Ruvolo, J.

We concur:

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Kline, P.J.

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Haerle, J.